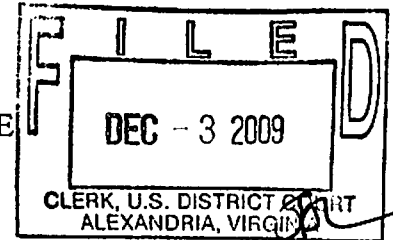


IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division



UNITED STATES OF AMERICA)	Criminal No. 1:09CR 512
)	
)	<u>Count 1</u> : Conspiracy to
v.)	Commit Copyright Infringement
)	18 U.S.C. § 371
)	
)	<u>Counts 2-5</u> :
ROBERT D. COOK &)	Willful Infringement of Copyright
TODD A. COOK,)	17 U.S.C. § 506(a)(1)(A)
Defendants)	18 U.S.C. § 2319(b)(1)
)	18 U.S.C. § 2
)	

INDICTMENT

December 2009 Term at Alexandria, Virginia

THE GRAND JURY CHARGES THAT:

I. Introduction

At all times relevant to this Indictment:

1. Defendants conspired and were engaged in the willful and unauthorized distribution and reproduction of copyrighted computer software in violation of federal copyright laws. The Defendants unlawfully distributed these copyrighted works over the Internet by selling the copyrighted works on websites with the domain names www.econo-soft.com, www.bargainsoftwaredownload.com, and www.esoftdirect.com (hereinafter referred to as the "Subject Websites").

2. The Defendants primarily sold counterfeit versions of popular copyrighted works of Adobe Systems Incorporated (hereinafter referred to as "Adobe"). Adobe is a computer software company headquartered in San Jose, California that creates

multimedia and creativity software products. In common terms, the illicit copies of the copyrighted works sold by the Defendants are referred to as counterfeit, pirated, or infringing works. The Defendants often sold suite versions of Adobe software, such as Adobe Creative Suite 2 (CS2) that is a compilation containing multiple copyrighted works within the suite. Some examples of the infringed computer software titles sold through the Subject Websites were: Adobe Creative Suite 2 (CS2), Adobe Photoshop CS2, Adobe Photoshop CS3, Adobe Illustrator CS2, Adobe Illustrator CS3, Adobe Acrobat 6.0 Professional, Adobe After Effects 6.0 Professional and Macromedia Dreamweaver 8. After a completed sale from one of the Subject Websites, purchasers of the pirated computer software downloaded the related digital files from computer servers utilized by the Defendants.

3. Defendant ROBERT D. COOK financed the criminal conduct by paying for operating costs relating to the sale of the copyrighted works. Defendant ROBERT D. COOK received the illicit funds generated from the sale of the copyrighted works. Furthermore, Defendant ROBERT D. COOK paid other co-conspirators for their work in furtherance of the criminal conduct.

4. Defendant TODD A. COOK consulted on the operation of the Subject Websites and provided customer service related to the sale of the copyrighted works.

5. CO-CONSPIRATOR #1, an unindicted individual known to the Grand Jury, provided technical assistance in setting up the Subject Websites and provided customer service related to the sale of copyrighted works.

6. During the conspiracy, the Defendants distributed pirated copyrighted works to at least 100 purchasers located in the Eastern District of Virginia. During the

course of the conspiracy, the Defendants distributed at least 5,000 copies of copyrighted works over the Internet through the Subject Websites. During the course of the conspiracy, the Defendants generated in excess of \$500,000 from the sale of infringing copyrighted works.

II. Object of the Conspiracy

7. It was the object of the Conspiracy to unlawfully obtain money through the willful and unauthorized sale of copyrighted works.

III. Manner and Means of the Conspiracy

8. It was a part of the conspiracy that the conspirators obtained unauthorized copies of copyrighted works, including computer software and distributed these copyrighted works throughout the United States by means of the Internet and the United States Postal Service.

9. It was further part of the conspiracy that the Defendants trafficked in technologies, products, services, and devices which were primarily designed and produced for the purpose of circumventing the access control and copy prevention systems embedded on digital copies of copyrighted works.

10. It was further part of the conspiracy to distribute these copyrighted works without a license, permission, or other authority from the owners of the copyrighted works.

11. To facilitate the sale of copyrighted works, the Defendants used a variety of services, including but not limited to Internet service providers, banking institutions, online advertising, credit card payment processors, credit card payment gateways and web-site shopping cart services.

12. It was further part of the conspiracy that the Defendants did use Yahoo!, Inc. computer servers to host the Subject Websites and maintain download servers containing the unauthorized copies of copyrighted works. ROBERT D. COOK, TODD A. COOK, and CO-CONSPIRATOR #1 used Yahoo e-mail accounts on numerous occasions to communicate with others about the sale, delivery, and installation of the pirated computer software. Furthermore, CO-CONSPIRATOR #1 periodically uploaded digital files that constituted the pirated computer software to Yahoo computer servers. The Defendants also utilized Yahoo! Search Marketing services to advertise the Subject Websites on the Internet.

13. The Defendants utilized the services of PayPal, Inc., an e-commerce business allowing payments and money transfers to be made through the Internet, to facilitate the receipt and transfer of funds generated from the sale of copyrighted works.

14. The Defendants utilized the services of Google, Inc. to advertise the Subject Websites on the Internet through www.google.com and to process payments through Google Checkout.

15. The Defendants utilized the services of Goldbar Enterprises LLC, a website shopping cart service, to provide shopping cart functionality for the Subject Websites.

16. The Defendants utilized the services of First Bank of Wichita Falls, Texas to open a bank account for the receipt and transfer of funds generated by the sale of copyrighted works.

17. The Defendants utilized the services of ASecureCart.Net, a website shopping cart service, to provide shopping cart functionality for the Subject Websites.

18. The Defendants utilized the services of Authorize.net, a credit card processing gateway service, for processing online credit card transactions for the Subject Websites.

IV. Overt Acts

19. It was further part of the conspiracy that the following acts in furtherance of and to affect the objects of the above-described conspiracy were committed in the Eastern District of Virginia, and elsewhere:

a. On or about May 19, 2006, ROBERT D. COOK and CO-CONSPIRATOR #1 began communicating by means of email about running websites to sell copyrighted computer software;

b. In approximately July 2006, the Defendants procured a variety of services from Yahoo!, Inc., including but not limited to: web-hosting services to host the publicly available Subject Websites, email services, and computer server storage for hosting of downloadable content;

c. On or about August 29, 2006, CO-CONSPIRATOR #1 sent an email to ROBERT D. COOK stating, "what we're doing is wrong!" and "what values are you showing your son?";

d. On or about January 4, 2007, ROBERT D. COOK opened a bank account at First Bank in Wichita Falls, Texas, titled "ECNO SOFT, INC";

e. On or about March 30, 2007, an email was sent from rcook1334@yahoo.com to CO-CONSPIRATOR #1 stating, "hey, this is just a suggestion, but a high selling product would be the new photoshop cs3." On the same day, CO-CONSPIRATOR #1 sent a reply email to rcook1334@yahoo.com stating, "I

agree, but right now there is nobody out there who has “cracked” it down into a self-extracting file.”

f. On May 21, 2007, Defendants ROBERT D. COOK and TODD A. COOK, through the website www.econo-soft.com, sold the copyrighted work Adobe Photoshop 8 for \$79.95 to an agent acting in an undercover capacity in Fairfax County, Virginia in the Eastern District of Virginia. On May 21, 2007, an agent acting in an undercover capacity downloaded the purchased pirated software from a Yahoo computer server used by the Defendants to an undercover computer located in Fairfax County, Virginia in the Eastern District of Virginia;

g. On October 3, 2007, Defendants ROBERT D. COOK and TODD A. COOK, through the website www.bargainsoftwaredownload.com, sold the copyrighted works Macromedia Dreamweaver 8 for \$69.95 and Adobe Photoshop Creative Suite 3 (containing numerous Adobe copyrighted works) for \$149.95, to an agent acting in an undercover capacity in Fairfax County, Virginia in the Eastern District of Virginia. On October 4, 2007, an agent acting in an undercover capacity downloaded the purchased pirated software from a Yahoo computer server used by the Defendants to an undercover computer located in Fairfax County, Virginia in the Eastern District of Virginia;

h. In response to an April 30, 2008 email from Yahoo!, Inc. concerning a notice of copyright infringement, Defendants caused two emails to be transmitted on or about May 2, 2008 from bargainsoftwaredownload@yahoo.com from the residence of ROBERT D. COOK and TODD A. COOK to Yahoo and to the Business Software Alliance agreeing to cease and desist sales of copyrighted software.

i. On or about May 4, 2008, the Defendants created the new domain name, www.esoftdirect.com, for the sale of copyrighted works;

j. On May 13, 2008, Defendants ROBERT D. COOK and TODD A. COOK, through the website www.esoftdirect.com, sold the copyrighted work Adobe Creative Suite 2 Premium (containing numerous Adobe copyrighted works), described as "Creative Suite 2 Premium DVD", for \$198.95, to an agent acting in an undercover capacity in Fairfax County, Virginia in the Eastern District of Virginia. On or about May 13, 2008, an agent acting in an undercover capacity downloaded the purchased pirated software from a Yahoo computer server used by the Defendants to an undercover computer located in Fairfax County, Virginia in the Eastern District of Virginia;

k. In association with the above-described undercover purchase conducted on May 13, 2008, an undercover agent received an email from loreana@econo-soft.com, containing links to download the purchased pirated software along with a Microsoft Word document authored by Defendant TODD A. COOK containing instructions for the download and installation of the purchased software;

l. The Defendants caused an envelope containing a DVD of the copyrighted work purchased on May 13, 2008 to be deposited in the United States mail in Wichita Falls, Texas, where it was later retrieved from the United States mail on or about May 21, 2008, at an undercover mailbox location in Fairfax County, Virginia in the Eastern District of Virginia;

m. On or about May 21, 2008, ROBERT D. COOK sent an email from rcook1334@yahoo.com to CO-CONSPIRATOR #1 regarding the new domain name esoftdirect.com stating, "Want to go back on yahoo do you think they will catch

on,. And can I transfer my website to another host if they do, and will all the buttons still be attached if I do. Love Robert.”

Count One

CONSPIRACY

20. From at least May 2006 and continuing through approximately May 2008, in the Eastern District of Virginia and elsewhere, ROBERT D. COOK and TODD A. COOK, Defendants herein, conspired and agreed to willfully infringe copyrights with each other and with others known and unknown to the Grand Jury, including un-indicted CO-CONSPIRATOR #1; that is, during a 180-day period, Defendants did conspire and agree to reproduce and distribute at least ten infringing copies of one or more copyrighted works, with a total retail value of more than \$2,500, for purposes of private financial gain and commercial advantage, in violation of Title 17, United States Code, Section 506(a)(1)(A) and Title 18, United States Code, Section 2 and 2319(b)(1).

(All in violation of Title 18, United States Code, § 371)

COUNT TWO

CRIMINAL COPYRIGHT INFRINGEMENT AND AIDING AND ABETTING

21. From on or about July 2006 through December 2006, in the Eastern District of Virginia, and elsewhere, Defendants,

ROBERT D. COOK,
TODD A. COOK,
and others known to the Grand Jury,

did willfully infringe the copyrights of copyrighted works, that is, computer software of Adobe Systems Incorporated, by the reproduction and distribution by electronic means, including by means of the Internet, during a 180-day period, of ten (10) or more copies of one or more of the copyrighted works, which had a retail value of more than \$2,500.

(All in violation of Title 17, United States Code, Section 506(a)(1)(A), and Title 18, United States Code, Sections 2 and 2319(b)(1))

COUNT THREE

CRIMINAL COPYRIGHT INFRINGEMENT AND AIDING AND ABETTING

22. From on or about January 2007 through June 2007, in the Eastern District of Virginia, and elsewhere, Defendants,

ROBERT D. COOK,
TODD A. COOK,
and others known to the Grand Jury,

did willfully infringe the copyrights of copyrighted works, that is, computer software of Adobe Systems Incorporated, by the reproduction and distribution by electronic means, including by means of the Internet, during a 180-day period, of ten (10) or more copies of one or more of the copyrighted works, which had a retail value of more than \$2,500.

(All in violation of Title 17, United States Code, Section 506(a)(1)(A), and Title 18, United States Code, Sections 2 and 2319(b)(1))

COUNT FOUR

CRIMINAL COPYRIGHT INFRINGEMENT AND AIDING AND ABETTING

23. From on or about July 2007 through December 2007, in the Eastern District of Virginia, and elsewhere, Defendants,

ROBERT D. COOK,
TODD A. COOK,
and others known to the Grand Jury,

did willfully infringe the copyrights of copyrighted works, that is, computer software of Adobe Systems Incorporated, by the reproduction and distribution by electronic means, including by means of the Internet, during a 180-day period, of ten (10) or more copies of one or more of the copyrighted works, which had a retail value of more than \$2,500.

(All in violation of Title 17, United States Code, Section 506(a)(1)(A), and Title 18, United States Code, Sections 2 and 2319(b)(1))

COUNT FIVE

CRIMINAL COPYRIGHT INFRINGEMENT AND AIDING AND ABETTING

24. From on or about January 2008 through June 2008, in the Eastern District of Virginia, and elsewhere, Defendants,

ROBERT D. COOK,
TODD A. COOK,
and others known to the Grand Jury,

did willfully infringe the copyrights of copyrighted works, that is, computer software of Adobe Systems Incorporated, by the reproduction and distribution by the United States Postal Service and electronic means, including by means of the Internet, during a 180-day period, of ten (10) or more copies of one or more of the copyrighted works, which had a retail value of more than \$2,500.

(All in violation of Title 17, United States Code, Section 506(a)(1)(A), and Title 18, United States Code, Sections 2 and 2319(b)(1))

FORFEITURE ALLEGATION ONE

25. As a result of the offenses alleged in Counts Two, Three, Four and Five of this Indictment, Defendant,

ROBERT D. COOK,

shall forfeit to the United States, pursuant to Title 17, United States Code, Sections 506(b) and 509(a), and Title 18 United States Code, Section 2323, all copies manufactured, reproduced, distributed, sold, or otherwise used, intended for use, or possessed with intent to use in violation of the offense under Section 506(a), and all plates, molds, matrices, masters, tapes, film negatives, or other articles by means of which such copies may be reproduced, and all electronic, mechanical, and other devices for manufacturing, reproducing, and assembling such copies, and any property used, or intended to be used in any manner or part, to commit or facilitate the commission of the offenses in Counts Two through Five.

Furthermore, upon conviction of an offense alleged in Counts One, Two, Three, Four or Five, Defendant ROBERT D. COOK, shall forfeit to the United States any property, real or personal, which constitutes or is derived from proceeds traceable to a violation of 17 U.S.C. §506(a)(1)(A) and 18 U.S.C. §2319.

FORFEITURE ALLEGATION TWO

26. As a result of the offenses alleged in Counts Two, Three, Four and Five of this Indictment, Defendant,

TODD A. COOK,

shall forfeit to the United States, pursuant to Title 17, United States Code, Sections 506(b) and 509(a), and Title 18 United States Code, Section 2323, all copies manufactured, reproduced, distributed, sold, or otherwise used, intended for use, or possessed with intent to use in violation of the offense under Section 506(a), and all plates, molds, matrices, masters, tapes, film negatives, or other articles by means of which such copies may be reproduced, and all electronic, mechanical, and other devices for manufacturing, reproducing, and assembling such copies, and any property used, or intended to be used in any manner or part, to commit or facilitate the commission of the offenses in Counts Two through Five.

Furthermore, upon conviction of an offense alleged in Counts One, Two, Three, Four, or Five, Defendant TODD A. COOK, shall forfeit to the United States any property, real or personal, which constitutes or is derived from proceeds traceable to a violation of 17 U.S.C. §506(a)(1)(A) and 18 U.S.C. §2319.

SUBSTITUTE ASSETS

27. If any of the above-described property, as a result of any act or omission of Defendants ROBERT D. COOK and TODD A. COOK:

- (A) cannot be located upon the exercise of due diligence;
- (B) has been transferred or sold to, or deposited with, a third party;
- (C) has been placed beyond the jurisdiction of the court;
- (D) has been substantially diminished in value; or
- (E) has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to 21 U.S.C. §853(p), as incorporated by 28 U.S.C. §2461(c), to seek forfeiture of any other property of the Defendants, up to the value of the forfeitable property described above.

A TRUE BILL

Pursuant to the E-Government Act,
the original of this page has been filed
under seal in the Clerk's Office.

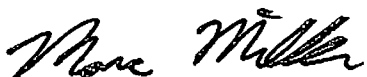
FOREPERSON OF THE GRAND JURY

DATE: December 2, 2009

DANA J. BOENTE
Acting United States Attorney



JAY V. PRABHU
Assistant United States Attorney



MARC MILLER
Trial Attorney, Criminal Division, U.S. Department of Justice